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8 JOSEPH TORRES

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 JOSEPH TORRES, an individual;  
12  
13 Plaintiff,

14 vs.

15 CITY OF OAKLAND, OAKLAND FIRE  
16 DEPARTMENT; TERESA DELOACH REED  
17 in her official and individual capacities; AND  
18 DOES 1 THROUGH 25 inclusive;

19 Defendants.

**CASE NO.:**

**COMPLAINT FOR:**

**RACE AND NATIONAL ORIGIN DISCRIMINATION  
BASED ON VIOLATION OF CALIFORNIA  
GOVERNMENT CODE SECTIONS 12940(a) et seq.**

**RETALIATION BASED ON VIOLATION OF  
CALIFORNIA GOVERNMENT CODE SECTIONS  
12940(a) et seq.**

**FAILURE TO PREVENT DISCRIMINATION BASED  
ON VIOLATION OF CALIFORNIA GOVERNMENT  
CODE SECTIONS 12940(a) et seq.**

**VIOLATION OF 42 U.S.C. §1983 RACIAL  
DISCRIMINATION**

**VIOLATION OF 42 U.S.C. §1983 RETALIATION**

**VIOLATION OF 42 U.S.C. §1981 RACIAL  
DISCRIMINATION**

**VIOLATION OF 42 U.S.C. §1981 RETALIATION**

**INTENTIONAL INFLICTION OF EMOTIONAL  
DISTRESS**

**REQUEST FOR PUNITIVE DAMAGES**

**JURY TRIAL DEMANDED**

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27 Plaintiff Joseph Torres (“plaintiff Torres” or “Captain Torres”) by and through his  
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attorneys allege as follows:

**INTRODUCTION**

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3 1. Plaintiff Torres has been serving Oakland as a firefighter for 23 years. In 1998,  
4 plaintiff Torres was promoted to Lieutenant. In 2005, he was promoted to Captain. Captain  
5 Torres has chaired multiple task forces and committees, including the BART Fire Liaison, the  
6 Oakland Fire Department (“OFD”) BART Committee, and the Professional Development Task  
7 Force. In addition to serving Oakland citizens at the highest professional level for decades,  
8 Captain Torres is also a dedicated family man. He has been married to his wife, Lisa, for 28  
9 years and they have raised five children. Some of their children have graduated from Harvard  
10 Law School and UC Berkeley, and their eldest son is an Assistant Attorney General in the State  
11 of New Mexico.  
12

**JURISDICTION AND VENUE**

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15 2. This action arises under 42 U.S.C. §§ 1981(a), 2000(e) and 1983. Plaintiff Torres  
16 invokes jurisdiction over his federal claim pursuant to the provisions of 28 U.S.C. § 1331 and 28  
17 U.S.C. § 1343. The acts and practices complained of herein occurred in the County of Alameda,  
18 California, within this judicial district.

19  
20 3. Jurisdiction over plaintiff’s pendent state law claims is appropriate under 28  
21 U.S.C. § 1367. The state law claims are related to the claims brought pursuant to the original  
22 jurisdiction of the court, and form part of the same case and controversy under Article III of the  
23 United States Constitution.

24  
25 4. This Court has personal jurisdiction over all defendants as the legal violations  
26 occurred in Alameda County, and the defendants’ conduct business in Alameda County, which is  
27 located within this judicial district.

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5. Assignment to the San Francisco Division of the United States District Court for

1 the Northern District of California is appropriate pursuant to Northern District Local Rule 3-2(d).

2 **PARTIES**

3 6. Plaintiff Torres is a United States citizen. Plaintiff Torres is a Hispanic and  
4 Native American male. Plaintiff Torres has worked for defendants City of Oakland and OFD for  
5 23 years. Plaintiff Torres has exhausted all administrative remedies. Plaintiff Torres filed a  
6 complaint with the California Department of Fair Employment and Housing (“DFEH”) on April  
7 22, 2015. Plaintiff’s right to sue letter was issued by the DFEH that day, and plaintiff Torres’  
8 assigned – and closed - DFEH Case Number is 537765-156255.  
9

10 7. Defendant City of Oakland is now and at all times mentioned herein was, a public  
11 entity organized and existing under the laws of the State of California.

12 8. Defendant Oakland Fire Department (“OFD”) is now, and at all times mentioned  
13 herein was, a department within the City of Oakland.

14 9. Defendant Teresa Deloach Reed (“defendant Deloach Reed”) is an employee and  
15 agent of defendant City of Oakland. Defendant Deloach Reed is the Fire Chief of the OFD and  
16 was plaintiff Torres’ supervisor at times material to this complaint. Defendant Deloach Reed  
17 acted within the course and scope of her employment and agency with the defendant City of  
18 Oakland and defendant OFD at all times. Plaintiff Torres sues defendant Deloach Reed in her  
19 official and individual capacity.  
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21 10. The true names and capacities of defendants named as DOES 1 through 25,  
22 inclusive, are presently unknown to plaintiff, who therefore sues said individual and corporate  
23 entity defendants by such fictitious names. Plaintiff will amend this complaint to set forth the  
24 true names and capacities of these fictitious defendants when they are ascertained. Plaintiff is  
25 informed and believes, and on that basis alleges, that each of the fictitious defendants has  
26 participated in the acts alleged in this complaint.  
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1 “highly qualified for the position” and did “very well” in his interviews, but stated that she did  
2 not promote Captain Torres because an undisclosed individual had told her that he did not  
3 support her and was speaking negatively about her.

4 18. Plaintiff Torres advised defendant Deloach Reed that any such hearsay was false  
5 and asked for the identity of the person(s) who had made the alleged statements which were  
6 false. But defendant Deloach Reed refused to identify the “source” of the alleged  
7 statements/allegations falsely attributed to Captain Torres. Moreover, defendant Deloach Reed  
8 failed to provide any details as to the comments plaintiff Torres had allegedly said. Captain  
9 Torres again explained to defendant Deloach Reed that any allegations were untrue and that she  
10 should not be making this type of life-changing decision as to his career based on hearsay,  
11 particularly without talking to him first.  
12

13 19. Defendant Deloach Reed told Captain Torres to keep up the good work, and  
14 assured him that he would be promoted off of this list to the OFD Battalion Chief position as  
15 other vacancies emerged.  
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17 20. In hindsight, and based on subsequent actions, Captain Torres views defendant  
18 Deloach Reed’s “hearsay” excuse as pretext for unlawful discrimination against Hispanics and  
19 Native Americans, as defendant DeLoach Reed never specified to Captain Torres any specifics  
20 about the alleged statements attributed to him, and subsequently only promoted African-  
21 Americans or Caucasians to the Battalion Chief position (whether permanent or for Limited  
22 Duration Battalion Chief positions).  
23

24 21. On multiple occasions after plaintiff Torres was denied his earned promotion, the  
25 International Association of Fire Fighters Local 55 formally asked defendant Deloach Reed to  
26 promote Captain Torres and Captain Geoffrey Hunter – the two (2) remaining people who  
27 passed the 2012 Battalion Chief test but were not promoted in 2012 - to serve as Limited  
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1 Duration Battalion Chiefs because there were three (3) OFD Battalion Chief vacancies due to  
2 long-term injuries.

3 22. Local 55 stressed to defendant Deloach Reed that it was unsafe for the community  
4 and the firefighters to have three (3) Battalion Chief vacancies, and that it was extremely  
5 expensive for those vacancies to be filled by overtime pay as defendant Deloach Reed was doing  
6 in lieu of promoting qualified individuals such as plaintiff Torres who had passed the Battalion  
7 Chief test.

8 23. After approximately eleven (11) months of delay, defendant Deloach Reed  
9 disregarded the directives of Local 55 and only promoted one (1) of the candidates as a Limited  
10 Duration Battalion Chief, while staffing the remaining two (2) needed Battalion Chief positions  
11 with employees working overtime. In so doing, defendant Deloach Reed remarkably singled out  
12 Captain Torres and denied him his opportunity to serve as a OFD Limited Duration Battalion  
13 Chief, increasing costs to the City, while placing the community at risk of harm through staffing  
14 the position on a temporary basis from a less qualified person.  
15

16 24. At the time that defendant City of Oakland was facing the OFD Battalion Chief  
17 shortfall, the City of Oakland had job vacancies at the OFD Deputy Chief level that had not been  
18 filled by defendant Deloach Reed for over a year and a half.  
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20 25. Notably, filling the open OFD Deputy Chief position would have opened yet  
21 another OFD Battalion Chief position, as the person who would be promoted to the open OFD  
22 Deputy Chief position would have to come from the OFD Battalion Chief ranks (which remained  
23 unfilled by permanent hires). As such, filling the open OFD Deputy Chief position would have  
24 opened up another OFD Battalion Chief position to be filled with a qualified employee who had  
25 passed the City's rigorous testing in 2012, and who had demonstrated his loyalty and ability to  
26 the City for years: Captain Torres.  
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1           26.     Despite open positions at the Battalion Chief and Deputy Chief level, defendant  
2 Deloach Reed chose to leave the OFD Deputy Chief position open, and continued to delay filling  
3 the OFD Battalion Chief level with permanent hires. The only person off the list of 4 who had  
4 not been promoted at this juncture was plaintiff Torres. And in failing to fill the positions,  
5 defendant Deloach Reed was increasing costs to defendant City of Oakland through increased  
6 overtime work for “temporary” fill in work at these critical levels in the chain of command.  
7 Rather than promote a qualified employee such as plaintiff Torres, defendant DeLoach Reed  
8 decided to increase the burden on taxpayers in the City of Oakland through overtime pay and  
9 discriminate against a Hispanic and Native American employee – plaintiff Torres.  
10

11           27.     The OFD Deputy Chief position became vacant in February 2013, however,  
12 defendant Deloach Reed did not begin accepting applications for the position until August 8,  
13 2014. Applications closed on September 19, 2014. Chief Deloach Reed stated that she would  
14 interview applicants on November 14, 2014.  
15

16           28.     Notably, the 2012 OFD Battalion Chief list died on November 16, 2014. By  
17 delaying to fill the OFD Deputy Chief position until mid-November 2014, defendant Deloach  
18 Reed guaranteed that she could deliberately bypass plaintiff Captain Torres for the promotion he  
19 had rightfully earned through the 2012 Battalion Chief Test. Such deliberate action to continue  
20 to deny a promotion to a properly qualified Hispanic/Native American is discriminatory,  
21 unlawful, wrong and worthy of the imposition of punitive damages.  
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23           29.     The discrimination directed towards plaintiff Torres persisted as to the OFD  
24 Battalion Chief position from the time plaintiff Torres placed and ranked number 3 on the 2012  
25 test.  
26

27           30.     In early 2014, one (1) fulltime OFD Battalion Chief’s position opened. The two  
28 (2) remaining candidates – one of which was plaintiff Torres - from the 2012 Battalion Chief test

1 were re-interviewed for the position of OFD Battalion Chief, as that list remained valid at the  
2 time of the interviews.

3 31. But once again, despite clear qualifications for the job after passing all tests,  
4 defendant Deloach Reed refused to promote plaintiff Captain Torres. Plaintiff Torres confronted  
5 Chief Deloach Reed about the basis of her refusal to properly promote him once again, and he  
6 received nothing back from her that had anything to do with Captain Torres' ability and  
7 qualification to serve the City of Oakland as a Battalion Chief. It was clear to Captain Torres at  
8 that juncture that Chief Deloach Reed only intended to promote Caucasians and African-  
9 Americans to the position of Battalion Chief.  
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11 32. Plaintiff Torres spoke to three (3) members of his interview panels – OFD Deputy  
12 Chief Mark Hoffmann, OFD Deputy Chief Darin White and OFD Battalion Chief Emon Usher –  
13 and they stated that defendant Deloach Reed did not disclose any concerns about plaintiff  
14 Captain Torres' job performance or testing qualifications to them. They further said that plaintiff  
15 Torres had interviewed exceptionally well and was more than qualified to be a OFD Battalion  
16 Chief.  
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18 33. After once again being denied the position of OFD Battalion Chief, and being the  
19 only Hispanic/Native American candidate on the list for OFD Battalion Chief, and not  
20 understanding how he could be denied the promotion he earned through tests and decades of top-  
21 notch professional performance, Captain Torres told defendant Deloach Reed that the number of  
22 Hispanic/Native American officers on the Oakland Fire Department did not reflect the  
23 composition of the community, and that many of the OFD Hispanic members were concerned.  
24 Moreover, as likely the only OFD employee of Native American descent, Captain Torres was  
25 concerned about underrepresentation for Native Americans within the OFD ranks as well.  
26

27 34. At the time the events of this complaint unfolded, none of the OFD Deputy Chiefs  
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1 or OFD Battalion Chiefs were Hispanic and/or Native American. Moreover, through that time  
2 period, approximately three (3) of 41 OFD Captains were Hispanic, and of 64 lieutenants,  
3 approximately seven (7) were Hispanic.

4 35. No OFD Captains were of Native American descent aside from plaintiff Torres,  
5 and no lieutenants were Native American.

6 36. From Captain Torres' investigation, it appears that, in the 146 year existence of  
7 defendant OFD, that there have never been any Hispanic or Native American Fire Chiefs or  
8 Deputy Chiefs, and there have only been three (3) Hispanic Battalion Chiefs – one of whom was  
9 of mixed Italian/Hispanic descent. Nobody of partial Native American descent has been  
10 promoted to the upper ranks of the OFD.  
11

12 37. In response to plaintiff Torres' legitimate questions as to the demographics of the  
13 OFD, and specifically the lack of representation of Hispanics and Native Americans in key  
14 higher realm positions, defendant Deloach Reed told Captain Torres that the issue was  
15 "unimportant," and that her promoted ranks "have enough Hispanics."  
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17 38. Captain Torres advised defendant Deloach Reed that he would have to look into  
18 his legal rights given that she was refusing to promote him based on his race and national origin.

19 39. Thereafter defendant Deloach Reed retaliated against plaintiff Torres for raising  
20 concerns about her discriminatory conduct directed towards him as a qualified Hispanic and  
21 Native American male.

22 40. Based on defendant Deloach Reed's alarming response, it became even more  
23 apparent to Captain Torres that defendant Deloach Reed would not promote him based on her  
24 own discriminatory practice of intentionally excluding Hispanic and Native American candidates  
25 from high level OFD command positions.  
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27 41. As of March 2015, there were two (2) permanent fulltime OFD Battalion Chief  
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1 positions that remained vacant. Further, there were two (2) additional OFD Battalion Chief  
2 vacancies due to long-term injuries. The latter two (2) positions were being filled by employees  
3 working overtime. Regarding the former two (2) permanent OFD Battalion Chief positions,  
4 once again, defendant Deloach Reed chose to discriminate and retaliate against plaintiff Torres  
5 and pass him over once again for an acting Battalion Chief position (e.g. Chief Deloach Reed  
6 could have either extended the Acting Battalion Chief list beyond November 2014, or hired  
7 Captain Torres to serve as a Limited Duration Battalion Chief).

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9 42. Following the termination of the list at issue in this case, there were two (2)  
10 individuals serving as acting OFD Battalion Chiefs – both of whom failed the OFD Battalion  
11 Chief’s test that Captain Torres ranked 3<sup>rd</sup> on; and neither of whom were Hispanic or Native  
12 American. This is objectively wrong and further evidence of discrimination directed at Captain  
13 Torres because of his race and ethnicity as a Hispanic/Native-American.

14  
15 43. Defendants need to be held accountable for its/their unlawful conduct and face the  
16 imposition of punitive damages.

17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **(Racial And National Origin Discrimination Against Defendants City of**

20 **Oakland and Oakland Fire Department pursuant to California Government Code Section**

21 **et seq. 12940 et seq.)**

22 44. Plaintiff Torres incorporates by reference each of the foregoing paragraphs as  
23 though fully set forth herein.

24 45. Defendants City of Oakland and Oakland Fire Department intentionally  
25 discriminated against plaintiff Torres on the basis of his race and/or national origin and forced  
26 him to work under conditions that other employees were not required to do.  
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1 55. Plaintiff Torres was also repeatedly denied his rightful promotion based on the  
2 unlawful discrimination and retaliation against him for asserting his right to be properly  
3 promoted based on his tests results, rather than his race/national origin.

4 56. Defendants' retaliated against plaintiff and denied plaintiff his rightful promotion.

5 57. Plaintiff Torres has been harmed by defendants' unlawful conduct.

6 58. Defendants' retaliation was a substantial factor in causing plaintiff harm.

7 WHEREFORE plaintiff Torres prays for relief as set forth below.

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9 **THIRD CAUSE OF ACTION**

10 **(Failure To Prevent Discrimination Against Defendants City of Oakland and Oakland Fire**  
11 **Department pursuant to California Government Code Section et seq. 12940 et seq.)**

12 59. Plaintiff incorporates by reference each of the foregoing paragraphs as if  
13 they were set forth fully herein.

14 60. Plaintiff was an employee of the defendants to this cause of action.

15 61. Defendants were fully aware of the discriminatory and retaliatory conduct they  
16 forced on plaintiff and failed to take appropriate measures to cease that discrimination and  
17 retaliation.

18 62. Plaintiff was subjected to discrimination and retaliation by defendants in the  
19 course and scope of his employment and harmed.

20 63. Defendants failed to take reasonable steps to prevent discrimination and  
21 retaliation against plaintiff.

22 64. Plaintiff was harmed.

23 65. Defendants' failure to take reasonable steps to prevent the discrimination and  
24 retaliation was a substantial factor in causing plaintiff harm.

25 WHEREFORE plaintiff prays for relief as set forth below.

26 **FOURTH CAUSE OF ACTION**

27 **(Violation of 42 U.S.C. Section 1983 Racial Discrimination)**

**(Against Defendant Deloach Reed)**

66. Plaintiff incorporates by reference each of the foregoing paragraphs as if they were set forth fully herein.

67. Defendant Deloach Reed acted under color of state law in causing the harm alleged herein.

68. By the conduct alleged herein, defendant Deloach Reed willfully and without justification deprived plaintiff Torres of his rights, privileges and immunities as secured to him by the laws and Constitution of the United States. All Constitutional rights covered, specifically including the due process and equal protection rights as afforded by the 14<sup>th</sup> (Fourteenth Amendment) in violation of 42 U.S.C. Section 1983.

WHEREFORE plaintiff prays for relief as set forth below.

**FIFTH CAUSE OF ACTION**

**(Violation of 42 U.S.C. Section 1983 Retaliation)**

**(Against Defendant Deloach Reed)**

69. Plaintiff incorporates by reference each of the foregoing paragraphs as if they were set forth fully herein.

70. Defendant Deloach Reed was acting under color of law in doing all acts alleged in this complaint.

71. By her conduct herein alleged, defendant Deloach Reed intentionally, willfully and without justification, did retaliate against plaintiff because of his protective activity in opposing racial, ethnic and national origin discrimination in violation of 42 U.S.C. section 1983.

WHEREFORE plaintiff prays for relief as set forth below

**FIFTH CAUSE OF ACTION**

**(Violation of 42 U.S.C. Section 1981 Racial Discrimination)**

**(Against All Defendants)**

72. Plaintiff incorporates by reference each of the foregoing paragraphs as if

1 they were set forth fully herein.

2 73. In doing the acts alleged herein, defendants intentionally and without justification  
3 deprived plaintiff Torres of the rights, privileges and immunities secured to him by the  
4 Constitution and laws of the United States, including plaintiff's right to be free from  
5 discrimination based on his race as provided by 42 U.S.C. Section 1981.

6 74. By perpetrating the acts as alleged in this complaint, defendants acted in  
7 conformance with Defendant City of Oakland and Defendant Oakland Fire Department's  
8 custom, practice and policy of discriminating against Hispanics and Native Americans.

9 75. Defendants' conduct as detailed in this complaint violates 42 U.S.C. Section  
10 1981.

11 WHEREFORE plaintiff prays for relief as set forth below

12 **SIXTH CAUSE OF ACTION**  
13 **(Violation of 42 U.S.C. Section 1981 Retaliation)**  
14 **(Against All Defendants)**

15 76. Plaintiff incorporates by reference each of the foregoing paragraphs as if  
16 they were set forth fully herein.

17 77. Plaintiff confronted defendant OFD Chief Deloach Reed about the discrimination  
18 she was perpetrating against him in refusing to promote him based on his race.

19 78. Plaintiff Torres told defendant OFD Chief Deloach Reed that he would pursue his  
20 legal rights if she persisted in discriminating against him based on his race.

21 79. In response, defendant OFD Chief Deloach Reed retaliated against plaintiff  
22 Torres and further refused to promote him based on his race and national origin.

23 80. Plaintiff Torres engaged in protective activity, and defendant OFD Chief Deloach  
24 Reed knew plaintiff Torres was engaged in protected activity when she decided to retaliate  
25 against plaintiff.

26 81. As a result of engaging in protected activity, defendants retaliated against plaintiff  
27 Torres in violation of 42 U.S.C. Section 1981.

28 WHEREFORE plaintiff prays for relief as set forth below

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**SEVENTH CAUSE OF ACTION**

**(Intentional Infliction of Emotional Distress)**

**(Against All Defendants)**

82. Plaintiff incorporates by reference each of the foregoing paragraphs as if they were set forth fully herein.

83. Defendants' conduct as alleged herein is extreme and outrageous and designed to inflict emotional distress against plaintiff.

84. Defendants' conduct was deliberate and intentional.

85. Defendants' acts, statements and actions as alleged in this complaint cause plaintiff to suffer extreme embarrassment, mental and physical anguish and distress.

86. It was reasonably foreseeable that the defendants' acts, statements and actions as alleged in this complaint would cause plaintiff to suffer extreme embarrassment, mental and physical anguish and distress.

WHEREFORE plaintiff prays for relief as set forth below

**REQUEST FOR PUNITIVE DAMAGES**

**(California Civil Code Section 3294)**

87. Plaintiff incorporates by reference each of the foregoing paragraphs as if they were set forth fully herein

88. Defendants' conduct as alleged herein is extreme and outrageous and falls within the protection of California Civil Code Section 3294 for the imposition of punitive damages against all defendants.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for the following relief:

1. Promotion to Battalion Chief;
2. Retroactive pay from the period plaintiff was denied his proper promotion to the present;
3. Compensatory and general damages according to proof;

- 1 4. Special damages according to proof;
- 2 5. Past economic damages according to proof;
- 3 6. Future economic damages according to proof;
- 4 7. Damages for emotional distress;
- 5 8. Punitive damages in an amount found reasonable and prudent by the trier of fact;
- 6 9. Prejudgment interest at the maxim legal rate;
- 7 10. Cost of suit;
- 8 11. Cost of the proceedings herein;
- 9 12. Reasonable attorneys' fees as permitted by law;
- 10 13. All other further relief as the Court may deem appropriate in the interests of
- 11 justice.

VERESCHAGIN LAW FIRM PC

12 Dated: November 5, 2015

13  
14 By /s/ Bryan Vereschagin  
15 BRYAN W. VERESCHAGIN  
16 Attorneys for Plaintiff  
17 JOSEPH TORRES

18  
19 **DEMAND FOR JURY TRIAL**

20 Pursuant to Federal Rule of Civil Procedure 38, plaintiff hereby demands a trial by jury  
21 on all issues triable to a jury in each cause of action of his complaint.

22 VERESCHAGIN LAW FIRM PC

23 Dated: November 5, 2015

24 By /s/ Bryan Vereschagin  
25 BRYAN W. VERESCHAGIN  
26 Attorneys for Plaintiff  
27 JOSEPH TORRES



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